District No. 1, Marine Engineers' Beneficial Association/National Maritime Union, AFL–CIO (Dutra Construction Co.) *and* John Erik Raahauge. Case 32–CB–3784

September 13, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The question presented for the National Labor Relations Board review in this case[1] is whether the judge correctly found that the Respondent violated Section 8(b)(2) and 1(A) of the Act by refusing to refer the Charging Party, John Raahauge, for employment because he was not a member of the Respondent.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

The Respondent does not directly dispute the finding that it refused to refer the Charging Party, John Raahauge, because he was not a union member. Rather, its exceptions to this finding contest the denial of a request for an indefinite postponement of the unfair labor practice hearing and the exclusion from the record of an affidavit submitted ex parte by the Respondent.

The Respondent's postponement motion, filed 5 days prior to the hearing, was occasioned by litigation pending in the United States District Court for the Southern District of New York to resolve an internal factional struggle for control of the Respondent. The motion requested more time to prepare for hearing. It was summarily denied by the Deputy Chief Administrative Law Judge.

The affidavit in question was submitted with a letter to the judge in the instant proceeding, stating that the Respondent would not be represented by counsel at the hearing for the reasons expressed in its rejected motion for postponement. The affidavit purports to describe the duties of a master boat operator, the classification for which the Employer requested Raahauge by name, and the accompanying letter takes the position that the duties are supervisory and that, because Raahauge would have been a statutory supervisor, unprotected by Section 7, the complaint should be dismissed. The judge treated the letter as an amendment to the Respondent's answer to the complaint that would add an affirmative defense, and he granted the motion to amend. On the motion of the General Counsel, however, he struck the affidavit as inadmissible hearsay.

We find no merit in the Respondent's exceptions regarding either the denial of its postponement motion or the exclusion of the affidavit. In view of the indefinite length of the requested postponement and the fact that the court proceeding on which the postponement was predicated was irrelevant to the merits of the complaint allegations in the instant case, we find that it was not an abuse of discretion for the Deputy Chief Administrative Law Judge to deny the motion. Regarding the admissibility of the affidavit, the Respondent did not allege that the affiant was unavailable to testify at the hearing. Furthermore, contrary to the Respondent's suggestion, a judge has no obligation to question witnesses on a party's behalf.

The duty of proving the affirmative defense rested with the Respondent, and it did not carry this burden by submitting an affidavit from a witness not shown to be unavailable.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, District No. 1,Marine Engineers' Beneficial Association/National Maritime Union, AFL–CIO, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in the Order.

Sharon Chabon, for the General Counsel.
Michael D. Derby, for the Respondent.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. This proceeding, in which I held a hearing on September 30, 1992, is based on an unfair labor practice charge filed on December 4, 1991, by John Erik Raahauge (Raahauge), and on a complaint issued on January 21, 1992, on behalf of the General Counsel of the National Labor Relations Board (Board), by the Board's Regional Director for Region 32, alleging that District No. 1, Marine Engineers' Beneficial Association/National Maritime Union, AFL–CIO (Respondent) has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the National Labor Relations Act (Act). On February 13, 1992, Respondent filed an answer to the complaint denying the commission of the alleged unfair labor practices.

The complaint, as amended in certain minor respects at the hearing, alleges Respondent is the sole and exclusive source of referrals for boat operators employed by the Dutra Construction Co., Inc. (Employer),[1] and that since on or about November 18, 1991, the Employer has requested Respondent to dispatch Raahauge to work for the Employer as a boat operator and, in violation of Section 8(b)(2) and (1)(A) of the Act, Respondent has dispatched to the Employer only those applicants who are members of Respondent and has failed

[1] On November 12, 1992, Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

[1] As amended at hearing.

and refused to refer Raahauge to the Employer for employment as a boat operator because Raahauge is not a member of the Respondent.

The hearing in this proceeding was scheduled for September 30, 1992, after having been previously rescheduled to that date. On September 25, 1992, by letter, which was faxed on that date to Deputy Chief Administrative Law Judge Earldean V.S. Robbins, Respondent's counsel filed a motion requesting that the hearing be postponed indefinitely. The General Counsel opposed the motion. Judge Robbins, by order issued September 25, denied the motion.

Respondent was not represented at the hearing in this proceeding by counsel or otherwise represented. On September 29, 1992, the day before the hearing, I received by fax from Respondent's counsel a copy of a letter dated September 29, which advised me, among other things, that for the reasons set forth in his September 25 motion for a continuance, that Respondent would not be represented at the hearing. In this letter, Respondent's counsel also advised me that it was Respondent's position that Charging Party Raahauge would have been employed as a supervisor within the meaning of Section 2(11) of the Act, while employed as a boat operator by the Employer, and for this reason Respondent did not violate the Act even if, as alleged in the complaint, it failed and refused to dispatch Raahauge to the Employer. In support of this contention, Respondent's counsel attached to his September 29 letter an affidavit from George Douglas Gould, which had apparently been furnished to the General Counsel during the investigatory state of this proceeding.

I treated Respondent counsel's aforesaid statement of position, set forth in his September 29 letter, as a motion to amend the Respondent's answer to the complaint to allege, as an affirmative defense, that Raahauge, while employed as a boat operator by the Employer, would not have enjoyed the protection of the Act because he would have been a supervisor within the meaning of Section 2(11) of the Act. I granted this motion, without objection by the General Counsel. However, acting on the General Counsel's motion to strike, I struck the affidavit offered in support of the motion because the affidavit constituted inadmissible hearsay evidence.

On the entire record, and from my observation of the demeanor of the witnesses, and having considered the General Counsel's posthearing brief, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Employer's Business*

The Employer, a California corporation, is a general contractor in the building and construction industry, with its principal place of business in Rio Vista, California, and with an office and place of business in Alameda, California.

During the 12-month period ending December 31, 1991, for work performed during that period, the Employer received between $5 million and $6 million from the United States Department of the Navy for building a pier for the Navy Department in the State of Hawaii. During that same period of time, the Employer paid $75,462.50 to American Workboats for services performed in 1991 by that employer for the Employer, in the State of Hawaii, in connection with the Employer's job of building the pier for the Department of the Navy.

Based on the foregoing, I find the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and meets one or more of the Board's applicable discretionary jurisdictional standards.

B. *Respondent's Status as a Statutory Labor Organization*

The complaint alleges, ''Respondent is now, and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.'' This allegation concerns a matter which is within the Respondent's direct knowledge. Yet, in its answer to the complaint, Respondent denied this allegation, ''due to lack of knowledge or information sufficient to form a belief as to the truth of the allegations herein.''

General experience and common sense indicate Respondent must know whether it meets the criteria for a labor organization set forth in Section 2(5) of the Act. Thus, for Respondent to allege it is unable to answer the allegation that it is a labor organization within the meaning of Section 2(5) because it lacks knowledge or information sufficient to form a belief whether it meets Section 2(5)'s criteria, smacks of frivolity, and for this reason I shall strike that portion of the Respondent's answer.

Alternatively, I find the record contains sufficient evidence to establish that Respondent is a labor organization within the meaning of Section 2(5) of the Act. The record establishes that Respondent represents the employees employed as boat operators by the Employer, and has a collective-bargaining agreement with the Employer covering those employees and that the agreement contains a union-security clause and a grievance arbitration procedure. It also has provisions regarding wages, hours, health and welfare and pension benefits, vacation and holiday pay, and the right of Respondent's representatives to visit the job at any time for the purpose of representing the employees covered by the agreement. In its answer to the complaint, as described supra, Respondent did not unequivocally deny that it was a labor organization within the meaning of Section 2(5) of the Act, rather it asserted it lacked knowledge or information sufficient to form a belief as to the truth of the allegation. No evidence was presented to refute the Respondent's status as a labor organization. Accordingly, based on the absence of evidence that employees do not participate in the Respondent and in view of the collective-bargaining agreement between the Employer and Respondent designating Respondent as the exclusive collective-bargaining representative of the Employer's boat operators, I find Respondent to be a labor organization within the meaning of Section 2(5) of the Act. *Mac Towing, Inc*., 262 NLRB 1331, 1332 (1982); *Building & Construction Trades Council of Boston*, 119 NLRB 1816, 1817 (1958); *F. C. Russell Co*., 116 NLRB 1015 (1956).

II. THE UNFAIR LABOR PRACTICES

A. *The Facts*

Respondent is the exclusive collective-bargaining representative of the Employer's boat operators and is party to a collective-bargaining agreement with the Employer, effective January 1, 1990, to July 1, 1993, covering those employ-

ees. The agreement obligates the Employer to use the Respondent's hiring hall when it hires boat operators. In this regard, Section 2 of the Agreement, entitled ''Method of Employment,'' reads:

> A. The Employer shall secure applicants through the Union's job referral system; . . . The Union shall dispatch such applicants as are requested by the Employer, including applicants specifically requested by name; provided, however, such applicants so requested by name shall have one (1) or more year's experience at their classification in the marine construction industry.
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> B. When in need of employees, the Employer shall first check with the Union as to the availability of applicants before hiring, shall request the Union to furnish applicants for employment to such applicants. After such preference, the Employer may obtain applicants from any other available source and may employ such applicants so obtained. The Union shall furnish the Employer with experienced and satisfactory applicants when and as called upon to do so, when available. In the event the Union is unable to furnish applicants as requested by the Employer within 48 hours of such request . . . the Employer may obtain applicants from any other available source and may employ such applicants so obtained.
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> E. The Employer shall retain the right to reject for cause any job applicant referred by the Union. Upon request of the Union, the Employer shall furnish the reason for such rejection. The Employer shall be the sole judge of the qualifications and competence of each applicant and upon such basis may reject such applicant.

During the time material, Tom Kelly was employed by the Respondent as dispatcher/business representative. He was the person employed by the Respondent who the Employer dealt with whenever the Employer secured or attempted to secure job applicants from Respondent's hiring hall. Kelly's superior was Anthony ''Tony'' Sasso. He is Respondent's principal official in the San Francisco Bay Area, the geographic area where the events material to this case occurred.[2]

The Charging Party, Raahauge, has been operating boats for approximately 25 years. In 1991, during the time material, he had approximately 1 year of experience operating boats in the marine construction industry. He is not a member of Respondent and prior to the events material to this case was not registered on the out-of-work list maintained by the Respondent's hiring facility.

The Employer first employed Raahauge as a boat operator in the spring of 1991,[3] for 3 or 4 days. He was not dispatched to the job by Respondent. He was hired directly by the Employer. After being on the job for 1 or 2 days, Raahauge was advised by the Employer's job supervisor to go to Respondent's office to register.

Raahauge went to the Respondent's office and asked to speak to a business agent about joining Respondent. He was referred by the secretary to Sasso, who told him Respondent was not accepting new members at that time because Respondent had enough members to take care of the available jobs. Sasso told Raahauge that he could sign the Respondent's out-of-work list and could work for the Employers under contract with the Respondent, including the Employer, for a period of 30 days without being a member of Respondent. This meeting ended with Raahauge signing Respondent's out-of-work list and with Sasso instructing him that if the Employer contacted him directly to offer him a job, that Raahauge was to notify the Respondent and that ''if [Respondent] did not have any members that could fill the job, then [Raahauge] could take the job.''

In September, Raahauge worked for 2 days for the Employer as a boat operator. Once again he was not dispatched to the job by the Respondent. He was hired directly by the Employer. When Raahauge informed Sasso, after the fact, of his employment by the Employer, Sasso told him that he was supposed to call Sasso, prior to taking the job or shortly thereafter, ''because, you know, I told you before, if there's members available in the hall, they come first, and if we don't have any members that can fill the job, then you can take the job.''

In September, after Raahauge had worked for the Employer, Kelly telephoned John Dieu, the Employer's dredging and construction manager, and told him, among other things, that Raahauge was not a member of Respondent and that Raahauge should come in to see Kelly the next time the Employer employed him. Dieu replied that the next time he employed Raahauge he would tell him to go to Respondent to be dispatched.

In November the Employer was doing dredging work for Chevron U.S.A., in the vicinity of the Chevron Long Wharf, which is located on San Francisco Bay. In connection with this project, the Employer, which at the time employed one boat operator, decided to start a second shift and to employ an additional boat operator to work that shift. The Employer also decided to hire Raahauge for that position. During November 18–19, as described in detail infra, Dieu, the Employer's dredging and construction manager, and Raahauge, tried unsuccessfully to persuade Respondent to dispatch Raahauge to the Employer to work as a boat operator on the Chevron job.

On November 18, Dieu telephoned Kelly and requested that he dispatch Raahauge to the Chevron job. Kelly acknowledged the request and this ended the conversation. Shortly thereafter, Kelly telephoned Dieu and stated that Raahauge was not a member of Respondent and that Kelly could not dispatch him because Respondent ''had good members on the out-of-work list sitting on the bench.''

Dieu telephoned Raahauge and told him he had requested that Respondent dispatch him to the Employer to work on the Chevron job. Dieu also told Raahauge to go to Respondent's office for the purpose of joining the Respondent and getting dispatched.

Raahauge, instead of going to Respondent's office, promptly telephoned Respondent's office and spoke to Kelly. He told Kelly what Dieu had said. Kelly replied that Dieu ''had it all wrong, that [Respondent] had members that they were in the process of contacting . . . to fill the job.''

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[2] I note that it was Sasso who acted as Respondent's negotiator during the negotiations which resulted in Respondent's collective-bargaining agreement with the Employer and it was Sasso who signed the agreement on Respondent's behalf.

[3] Unless specified otherwise, all dates hereinafter refer to the year 1991.

Raahauge replied that Dieu had told him he had telephoned Respondent's office and requested Raahauge for the job. Kelly replied, ''I don't care who requested you. The members come first.''

Raahauge, after his above-described conversation with Kelly, telephoned Dieu's office and relayed Kelly's message to Dieu's secretary. Subsequently, Dieu telephoned Raahauge and stated he had again asked Respondent to dispatch Raahauge, because he did not want an inexperienced boat operator operating equipment worth a couple of million dollars. Dieu instructed Raahauge to go to Respondent's office for the purpose of paying his union dues and getting dispatched.

Prior to his above-described telephone conversation with Raahauge, Dieu had in fact telephoned Kelly and told him he still wanted Respondent to dispatch Raahauge. Kelly replied he had some good applicants he wanted Dieu to interview. Dieu indicated he did not want to do that, but wanted Kelly to dispatch Raahauge and complained that in the past Respondent had never given him this much difficulty. Kelly responded by stating, ''I've got these good members sitting on the bench and I'm not going to take a new member in until I send those out.''

In compliance with Dieu's instruction, Raahauge went to the Respondent's office, which is located in San Francisco, California. Raahauge spoke to Kelly, who told him that he did not understand why Raahauge had come to the office because ''I've got calls out to several members to fill this job.'' When Raahauge attempted to hand Kelly the money necessary for Raahauge to join Respondent, Kelly refused to accept it. Raahauge accused Respondent of treating him differently now than in the past and of treating him differently than it had treated other applicants who had been allowed to join Respondent after having been hired directly by employers. Kelly left the room and returned with Sasso. Sasso gave Raahauge the following explanation for Respondent's conduct: ''[W]e're not taking new members . . . we've got calls out to members that are out of work. We have enough members right now, and that's the way it goes.'' Raahauge replied by stating that in the past when applicants had gotten their jobs from employers, they had been permitted to join the Respondent, and stated he felt Sasso was blackballing him because in the mid-1980s Raahauge had been a part of a group of employees who had voted to decertify the Respondent. Sasso stated Raahauge had no proof to substantiate that accusation. The meeting ended with Raahauge asking, didn't the fact he was on Respondent's out-of-work list mean anything? Sasso answered, ''I don't owe you or anybody on that out-of-work list anything. My duty is to provide for my members.''

Following his above-described meeting with Kelly and Sasso, Raahauge went to Dieu's office, which is located in Alameda, California, and when he walked into the office Dieu was talking with Sasso on the telephone; a speaker phone.

Raahauge's testimony of what was said during this conversation, follows: Dieu stated that he was tired of the unqualified applicants Respondent was sending him and asked why Sasso did not dispatch Raahauge; Sasso answered, ''Because he is not a member and you've got a contract with us and it specifies that you have to take union members''; Dieu answered, ''But it also says they have to be qualified''; Sasso stated he would send someone who was qualified; and Dieu ended the conversation by stating, ''Okay, send them.''

Raahauge further testified that immediately after the conversation between Dieu and Sasso, that Dieu told him the Employer could not employ him because Dieu did not want any ''union problems.''

Dieu's testimony concerning what was said during his telephone conversation with Sasso, follows: Sasso told him Respondent did not intend to dispatch Raahauge because he was not a member of Respondent and Respondent had ''good people'' or ''good members'' on the bench, or words to this effect.

Dieu further testified that after his telephone conversation with Sasso that Dieu telephoned Kelly and told him to go ahead and send him one of the applicants who Sasso and Kelly had previously indicated they wanted Dieu to interview.

Later that day, November 19, about 4:30 p.m., Respondent dispatched an applicant to the Employer. Dieu was unable to hire this applicant, even though he was qualified, because he had a full beard which he refused to shave. Chevron, for safety reasons, refused to allow employees to work on its premises with full beards.

Dieu then telephoned Kelly and informed him of the outcome of the interview and repeated his request that Respondent dispatch Raahauge. Kelly replied by stating that Raahauge ''was not a member of the Union and [Kelly] had a couple more guys that he wanted [Dieu] to try out on the boat.''

The next day, Kelly dispatched a man to the Employer, who was a qualified boat operator. He was hired by Dieu for the Chevron job.

B. *Discussion and Conclusions*

A union may lawfully administer a referral system for the benefit of the employers seeking workers and employees seeking jobs. *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 672–677 (1961). However, a union violates Section 8(b)(1)(A) and (2) of the Act, if it operates an exclusive referral system and fails or refuses to refer applicants for employment because of discriminatory considerations. Id. at 676–677. Accordingly, a union that operates an exclusive hiring facility violates Section 8(b)(1)(A) and (2) of the Act, if it refuses to refer an applicant for employment because the applicant is not a member of the union.

The complaint herein alleges, in substance, that Respondent is the sole and exclusive source of referrals for boat operators employed by the Employer and that since on or about November 18 the Employer has requested that Respondent dispatch Raahauge to work for the Employer as a boat operator and, in violation of Section 8(b)(1)(A) and (2) of the Act, Respondent has refused to honor the Employer's request because Raahauge is not a member of the Respondent. This allegation has merit for the reasons below.

The record herein, as described supra, establishes that Respondent operates a hiring facility for the benefit of employers and employees and that, pursuant to the terms of its collective-bargaining agreement with the Employer, administers an exclusive referral system whereby the Employer is contractually obligated to hire its boat operators exclusively from Respondent's hiring facility. The record herein, as described supra, also establishes that on November 18 the Em-

ployer requested Respondent to refer Raahauge to the Employer for employment as a boat operator on its Chevron job and that Respondent refused to honor this request. Thus, the sole remaining question for decision is whether, when it refused to honor the Employer's request, the Respondent was motivated by the fact that Raahauge was not a member of the Respondent. If Respondent's refusal to honor the Employer's request for Raahauge was motivated by the fact that Raahauge was not a member of the Respondent, then Respondent's refusal violated Section 8(b)(1)(A) and (2) of the Act, as alleged in the complaint.

I am of the opinion, for the reasons below, that the record as a whole establishes that a motivating factor in Respondent's refusal to refer Raahauge to the Employer was the fact that he was not a member of the Respondent, and that the record as a whole fails to establish that Respondent would have refused to refer Raahauge, in any event, even if he had been a member of the Respondent.[4]

In the spring of 1991 when Raahauge registered for work on the Respondent's out-of-work list, he was notified by Respondent's representative Sasso that he would be referred for work to the Employer only ''if [Respondent] did not have any members that could fill the job.''

In September, when Raahauge was being reprimanded by Sasso for having worked for the Employer without first having informed Respondent, Sasso reminded Raahauge, ''If there's members available in the hall, they come first, and if we don't have any members that can fill the job, then you can take the job.''

On November 18, when Dieu, the Employer's construction manager, telephoned Kelly, the Respondent's hiring dispatcher/business representative, and requested that Kelly refer Raahauge to the Employer as a boat operator on the Chevron job, Kelly responded by stating Raahauge was not a member of Respondent and Kelly could not dispatch him because Respondent ''had good members on the out-of-work list sitting on the bench,'' and when later that same day Raahauge telephoned Kelly and told him he understood Dieu had asked Respondent to refer him to the Chevron job, Kelly replied, ''I don't care who requested you[,] [t]he members come first,'' and later, when Dieu made another telephone call to Kelly asking him to dispatch Raahauge, Kelly responded by stating, ''I've got these good members sitting on the bench and I'm not going to take a new member in [referring to Raahauge] until I send those out.''

Subsequently, when Raahauge personally visited Respondent's office and spoke to Kelly and Sasso about the Employer's request that he be dispatched to the Chevron job, Kelly told him he did not understand why Raahauge had bothered to come to Respondent's office because, he stated, ''I've got calls out to several members to fill this job,'' and, in response to Raahauge's effort to become a member of Respondent, Sasso declared, ''We're not taking new members . . . we've got calls out to members that are out of work,'' and then when Raahauge asked whether his registration on Respondent's out-of-work list meant anything, Sasso answered, ''I don't owe you or anybody on that out-of-work list anything[,] [m]y duty is to provide for my members.''

Based on the evidence set forth immediately above, I find the General Counsel has established that when Respondent refused the Employer's November 18 request that Raahauge be dispatched to the Employer as a boat operator for the Employer's Chevron job, that Respondent's refusal was motivated in substantial part by the fact that Raahauge was not a member of the Respondent. In view of this and because the record as a whole fails to establish that Respondent would have refused to refer Raahauge to the Employer, in any event, even if he had been a member of Respondent, I find Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to honor the Employer's November 18 request that Raahauge be referred to the Employer's Chevron job.[5]

CONCLUSIONS OF LAW

1. On November 18, 1991, Respondent, in the operation of its exclusive hiring hall, refused to refer Raahauge to a job as a boat operator for the Employer because Raahauge was not a member of the Respondent, thereby violating Section 8(b)(1)(A) and (2) of the Act.

2. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

I shall recommend an order requiring the Respondent to make Raahauge whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful refusal to dispatch him to work for the Employer on November 18, 1991, as a boat operator on the Employer's Chevron job. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, District No. 1, Marine Engineers' Beneficial Association/National Maritime Union, AFL–CIO, San Francisco, California, its officers, representatives, and agents, shall

1. Cease and desist from

(a) Discriminating against employees or applicants for employment in the operation of its exclusive hiring facility, by

[4] In analyzing the Respondent's refusal to honor the Employer's November 18 request that Raahauge be dispatched to the Employer, I have been guided by the Board's decision in *Wright Line*, 251 NLRB 1083 (1980). See *Service Employees Local 9 (American Building Maintenance)*, 303 NLRB 735 (1991).

[5] The record lacks evidence to support Respondent's affirmative defense that Raahauge, as a boat operator, would have been employed by the Employer as a supervisor within the meaning of Sec. 2(11) of the Act.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

refusing to dispatch or refer them for employment because they are not members of the Respondent.

(b) Causing or attempting to cause the Employer or any other employer to discriminate against employees or applicants for employment, in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make John Erik Raahauge whole for any loss of earnings and benefits he may have suffered because he was unlawfully denied a dispatch and referral to employment with the Employer on November 18, 1991, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents, for examination and copying, all hiring records, dispatcher lists, referral slips, and other documents necessary to analyze and compute the amount of backpay due John Erik Raahauge.

(c) Post at its business offices, hiring hall and meeting places in San Francisco, California, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Additional copies of the attached notice marked ''Appendix'' shall be signed by an authorized representative of the Respondent and forthwith returned to the Regional Director for Region 32 for posting by the Employer, it being willing, at its places of business where notices to its employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this order what steps Respondent has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminate against employees or applicants for employment, in the operation of our exclusive hiring hall, by refusing to dispatch or refer them to employment because they are not members of our union.

WE WILL NOT cause or attempt to cause Dutra Construction Company, Inc., or any other employer, to discriminate against employees or applicants for employment, in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make John Erik Raahauge whole for any loss of earnings or other employment benefits he may have suffered because we unlawfully refused to refer and dispatch him to employment with Dutra Construction Company, Inc., on November 18, 1991, with interest to be computed on the amount owed.

DISTRICT NO. 1, MARINE ENGINEERS' BENEFICIAL ASSOCIATION/NATIONAL MARITIME UNION, AFL–CIO